

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Jeff Fries et al.

Art Unit 3661

Serial No. 10/743,591

Filed December 22, 2003

Confirmation No. 7577

For DIGITAL TRAIN SYSTEM FOR AUTOMATICALLY DETECTING TRAINS APPROACHING A CROSSING

Examiner: Thu V. Nguyen

August 27, 2007

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

TO THE COMMISSIONER FOR PATENTS

SIR:

In response to the "Decision on Application for Patent Term Adjustment" (copy attached) mailed June 29, 2007, and in accordance with 35 U.S.C. 154, Applicants request reconsideration of the patent term adjustment indicated in the Notice of Allowance and Issue Notification. Applicants believe that the patent term adjustment indicated by the Office is incorrect.

The Office indicated in the Notice of Allowance that Applicants are entitled to a term adjustment of 343 days based on 343 days of delay attributed to the Office, with no offset due to delay attributed to the Applicants. Based on the following, Applicants believe that the actual delay attributed to the Office should be 361 days, and therefore, the proper term adjustment for this application is 361 days.

Applicants filed the application on December 22, 2003, and the first Office action was mailed on January 31, 2006, resulting in 343 days of delay attributable to the Office under 35 U.S.C. 154(b)(1)(A)(i) and 37 CFR § 1.703(a)(1). Additionally, Applicants paid the issue fee on March 20, 2007, and the patent issued on August 7, 2007, resulting in an additional 18 days of delay attributable to the Office under 35 U.S.C. 154(b)(1)(A)(iv) and 37 CFR § 1.703(a)(6) for a total of 361 days of delay attributable to the Office under 35 U.S.C. 154(b)(1)(A).

In summary, the term extension should be:

REASON FOR EXTENSION	EXTENSION
delay attributable to the Office under 35 U.S.C. 154(b)(1)(A)(i) and 37 CFR § 1.703(a)(1)	343 days
delay attributable to the Office under 35 U.S.C. 154(b)(1)(A)(iv) and 37 CFR § 1.703(a)(6)	018 days
TOTAL	361 days

According to Patent Application Information Retrieval, the Office calculated a total of 121 days of Applicant delay. The Office attributes 120 days of delay to the Applicants based on a date corresponding to "Workflow-drawings finished" which is apparently unrelated to any submission by the Applicants. Also, the Office attributes 1 day of delay to the Applicants based on the submission of a replacement drawing on March 20, 2007 as requested by the Office in the Notice of Allowance mailed December 29, 2006. All Applicant responses were fully responsive and filed within 3 months of a rejection, objection, argument, or other request by the Office as required by 35 U.S.C. 154(b)(2)(C)(ii). Thus, there were no circumstances during the prosecution that constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 35 U.S.C. 154(b)(2) or 37 CFR § 1.704, and the present patent is not subject to a terminal disclaimer. Applicants respectfully submit that there are no days of delay attributable to the Applicants, and under 35 U.S.C. 154 and 37 CFR § 1.703(f), the proper patent term adjustment is 361 days, the sum of the above adjustments.

Applicants do not believe that any additional fees are due in connection with this request for patent term adjustment. If, however, the Commissioner determines that an additional fee is due, he is authorized to charge Deposit Account No. 07-0846.

Respectfully submitted,

/Frank R. Agovino/

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JUN 29 2007

OFFICE OF PETITIONS

In re Application of : DECISION ON APPLICATION
✓ Fries et al. : FOR
✓ Application No. 10/743,591 : PATENT TERM ADJUSTMENT
✓ Filed: December 22, 2003 :
✓ Atty Docket No. 133197/GETS :
5319.1 :

This is a decision on the "Application for Patent Term Adjustment," filed February 15, 2007. Applicants request additional patent term pursuant to 37 CFR 1.702(b) and 1.703(b) on the basis that the Notice of Allowance was mailed on December 29, 2006, which is 3 years and 7 days after the filing date of the application.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date. A decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

37 CFR 1.703(b) provides that:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, ...

*Preliminary decision
adjusted for 7 days
PTA request
(see back)*
mmm

Pursuant to this section, the period of adjustment is calculated based on the date of issue of the patent and not based on the date of mailing of the Notice of Allowance, as asserted by applicants.

Patentee is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to

the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions